

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)

WT. Docket No. 96-198

Implementation of Section 255)

and 251 (a)(2) of the)

Communications Act of 1934, as)

Enacted by the Telecommunications)

Act of 1996)

Access to Telecommunications Service.)

Telecommunications Equipment and Customer)

Premises Equipment by Persons with Disabilities)

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

**PETITION FOR PARTIAL RECONSIDERATION OF
THE COUNCIL OF ORGANIZATIONAL REPRESENTATIVES
ON NATIONAL ISSUES CONCERNING
PEOPLE WHO ARE DEAF OR HARD OF HEARING
(COR)**

Evelyn Cherow
American Speech-Language-
Hearing Association
10801 Rockville Pike
Rockville, MD 20852
(301) 897-5700
Co-Chair COR

Donna Sorkin
Alexander Graham Bell Association for the
Deaf and Hard of Hearing
3717 Volta Place, N.W.
Washington, DC 20007-2778
(202) 337-5220
Co-Chair COR

Of Counsel:
Stuart Downing
Sara Steetle
Law Students
Georgetown University Law Center

Jeneba Jalloh, Esq.
Angela J. Campbell, Esq.
Citizens Communications Center Project
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, N.W., Suite 312
Washington, D.C. 20001
(202) 662-9535

December 20, 1999

Counsel for Council of Organizational
Representatives

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TO: The Commission

Petition for Partial Reconsideration

Introduction.

Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, Council for Organizational Representatives ("COR")¹ respectfully submits this Petition for Partial Reconsideration of the Commission's Report and Order, *Implementation of Section 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the 1996 Telecommunications Act*, FCC 99-181, WT Docket No. 96-198, (rel. September 29, 1999). ("255 Order"). COR is a coalition of national organizations that are committed to improving the lives of individuals who are deaf or hard of hearing. Constituencies of COR organizations provide a variety of services, including technological and telecommunications services, educational programs, support groups

¹ The following members of COR support these comments: Alexander Graham Bell Association for the Deaf and Hard of Hearing; American Academy of Audiology; American Speech-Language-Hearing Association; League for the Hard of Hearing; National Association of the Deaf; Self Help for Hard of Hearing People, Inc.; TDI; and WGBH, The Caption Center.

and self-help programs, medical, audiological, and speech-language pathology assessment and rehabilitation services, information on assistive devices and technology, and general information on other services for deaf and hard of hearing consumers. Among other things, COR serves as a bridge among interested organizations, the general public, and the community of people with disabilities on matters concerning deaf and hard of hearing individuals. COR has been an active participant in virtually all of the FCC's earlier proceedings on issues concerning people who are deaf and hard of hearing.

COR strongly supports the bulk of the Commission's rules implementing Section 255 and 251(a)(2) of the Telecommunications Act. These rules affect at least 26 million deaf and hard of hearing individuals of all ages and all degrees of hearing loss. COR commends the Commission for its forward looking approach to solving the problems encountered by people with disabilities using telecommunications equipment and services.

While COR is generally pleased with the adopted rules, it asks the Commission to reconsider one provision concerning volume control on telephone receivers, in light of recent developments. After the Commission issued the *255 Order*, the Architectural and Transportation Barriers Compliance Board ("Access Board"), an independent Federal agency whose primary mission is to increase access for persons with disabilities, proposed to increase its volume control guidelines to 12-20dB. Because the FCC's standards are based on those of the Access Board, it should also raise its volume control range and better serve the needs of the people who are hard of hearing.

I. THE COMMISSION SHOULD AMEND THE VOLUME CONTROL STANDARDS FOR TELEPHONES TO BE CONSISTENT WITH THE ACCESS BOARD'S GUIDELINES

Section 255(e) mandated the Access Board to develop minimum guidelines and requirements for standards issued under the American Disabilities Act ("ADA") and the Architectural Barriers Act ("ABA").² 47 U.S.C. §255(e).³ The Access Board convened the Telecommunications Access Advisory Committee ("TAAC") which submitted accessibility recommendations. TAAC's suggestions formed the basis of guidelines which the Access Board later adopted. *255 Order* at ¶9.⁴ The Access Board issue two sets of guidelines: 1) the Americans with Disabilities Act Accessibility Guidelines ("ADAAG") apply to newly constructed or altered public pay telephones covered by the ADA and ABA; and 2) the Access Board's own guidelines apply to all telephones covered by Section 255 of the Telecommunications Act of 1996. While Congress granted the Access Board the authority to develop accessibility guidelines, it also gave the FCC the exclusive enforcement authority. 47 U.S.C. §255(f). Thus, the Commission initiated its own rulemaking to implement Section 255.⁵

²The ADA requires that buildings and facilities be accessible to and usable by people with disabilities. See 42 U.S.C. 12101 et seq. The ABA requires that facilities designed, built, altered or leased with certain Federal funds be accessible to persons with disabilities. See 42 U.S.C. 4151 et seq.

³ The Board also develops accessibility standards for electronic and information standards under section 508 of the Rehabilitation Act. *255 Order* at ¶8, fn. 25.

⁴ 36 C.F.R. Part 1163.

⁵ *Implementation of Section 255 of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 13 FCC Rcd 20391 (1998); See also *Implementation of Section 255 of the Telecommunications Act of 1996*, Notice of Inquiry, 11 FCC Rcd 19152 (1996).

In the *255 Order*, the Commission adopted rules that are based upon the Access Board guidelines. *255 Order* at 14. However, the Commission chose not to adopt the Access Board's guidelines which require that volume control telephones provide a minimum of 20 dB adjustable gain. *255 Order* at 25. The Commission chose to retain its rule which requires that all telephones manufactured in, or imported for use in, the United States after January 1, 2000 have the capability of providing 12-18 dB of volume gain or boost. 47 C.F.R. §68.6, 68.317.

The Commission first adopted its 12-18 dB range volume control standard when it implemented the Hearing Aid Compatibility ("HAC") Act.⁶ *255 Order* at 25. To assist it in implementing the HAC Act⁷, the Commission established a nineteen-member Hearing Aid Compatibility Negotiated Rulemaking Committee ("Committee").⁸ The Committee suggested the Commission base its volume control guidelines on the Access Board's ADAAG volume control guidelines for public pay telephones.⁹ Thus, the FCC's original decision to require

⁶ *Access to Telecommunications Equipment and Services by Persons With Disabilities*, Report and Order, CC Docket No. 87-124, 11 FCC Rcd 8249 (1996) ("HAC Report and Order").

⁷ The HAC Act and Telecommunications Act of 1996 govern all telephones, regardless if they are residential, commercial, in a private residence or in a government building, and are not limited to public pay telephones as the ADAAG guidelines are.

⁸ Committee members represented all interested parties, including the Commission, telephone equipment manufacturers, employers, hospitals, nursing homes, hotels and motels, and persons with disabilities. *Access to Telecommunications Equipment and Services by Persons With Disabilities*, Notice of Proposed Rulemaking CC Docket No. 87-124, 11 FCC Rcd 4338, 4340 (1995) ("HAC NPRM").

⁹ *Id.* at 4367 (citing Americans With Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG), at 4.31.5, 56 FR 35455, at 4.1.3 (17)(b)(pp. 35615-35616) and at 4.30 (2)(p. 35660) and at 4.31.5 (p. 35661), July 26, 1991).

volume control of 12-18 dB resulted from a decision to be consistent with the Access Board's ADAAG guidelines.

The Access Board, however, is required to review and update its guidelines periodically. In January 1998, the Board increased the minimum gain to 20dB in order to be compatible with the 1997 American National Standards Institute ("ANSI") guidelines for public pay telephones. *See* Architectural and Transportation Barriers Compliance Board, Final Rule, February 3, 1998, codified at 36 CFR Part 1193. The ADAAG standard, at that time, was still 12-18 dB.

In its *255 Order*, the Commission recognized the rationale behind the Access Board's decision to provide a more stringent volume control standard, but nonetheless choose not to adopt the Access Board's standard, but to be consistent with the ADAAG standard.¹⁰ First, it did not want to supercede rules developed under the negotiated rulemaking. *Id.* Second, the Commission stated it would be unduly burdensome to alter the volume control standards because the industry has been making plans to incorporate the HAC Act volume control requirements by January 1, 2000. *Id.*

Less than one month after the Commission released its *255 Order*, the Access Board, pursuant to recommendations made by its review advisory committee, issued a proposed rulemaking incorporating structural changes to the format and style of its ADAAG guidelines. *See* Architectural and Transportation Barriers Compliance Board, Notice of Proposed Rulemaking, (rel. Nov. 16, 1999). The Board acknowledged that the 1998 ANSI guidelines for public pay telephones, the most current standards, retained 20db as the maximum volume

¹⁰See Telecommunications Act Accessibility Guidelines, 36 C.F.R. Part 1193.43 (e).

amplification. The Board proposes to increase the ADAAG guidelines to 20 dB as well. This action reflects the Board's commitment to be consistent with private voluntary standard-settings bodies such as ANSI.

A. The Commission should defer to the Access Board's Expertise and Make Its Rules Consistent with the Access Board ADAAG Guidelines.

When the Commission chose to use the 12-18 dB ADAAG standard, it was not aware of the Access Board's proposal to increase the ADAAG standard to 12-20 dB. The Commission should thus take into account this new information and adjust its rule so there is consistency across federal standards. The Commission has already acknowledged that the Access Board has expertise in identifying the access requirements of persons with disabilities in a comprehensive manner. 255 *Order* at 15. The Commission also noted that it believed that Congress intended that such guidelines be given significant consideration in implementing Section 255. *Id.*

The Access Board raised the decibel standard in response to consumer comments filed in its rulemaking proceeding to fulfill its mandate to issue guidelines under the Telecommunications Act. *See* Access Board, Telecommunications Act Accessibility Guidelines, Notice of Proposed Rulemaking, 62 Fed. Reg. 19,178 (1997). Numerous comments were submitted by hard of hearing individuals stating that the 12-18 dB adjustable volume gain was not enough, and that a gain of 18-25 dB would make telephones more accessible. The majority of comments were from hard of hearing people who reported having trouble using public pay telephones because of inadequate receiver amplification levels. *See* Access Board, Telecommunications Guidelines, Final Rule, 63 Fed. Reg. 2,414 (1998). The Commission has

previously acknowledged that volume control allows many hearing-aid users to adjust the sound coming from a receiver to accommodate the capabilities of their individual hearing aid and that volume control would also benefit telephone users who have a need for amplification to overcome high-noise environments. *See* HAC Report and Order, 11 FCC Rcd at 4366.

But to be effective, the volume control must provide sufficient boost levels. As the Access Board recognized, existing standards have proven to be too weak. Many people who are deaf and hard of hearing use peripheral assistive technology such as external devices which provide direct audio input to their hearing aid, amplifiers, implants or other assistive listening devices. Raising the volume on these devices increases the background noise and exacerbates, rather than helps the listeners' ability to hear the person on the other end of the telephone. A two decibel increase in a telephone headset volume is a significant logarithmic volume increase. *See* Sound Basics (visited Nov. 4, 1999) <<http://www.nonoise.org/resource/educat/ownpage/soundbasics.htm>>. Therefore, a small increase in decibels represents a great increase in intensity. *Id.*

The Commission should update its volume control standards to be consistent with industry guidelines and increase the minimum adjustable gain to 20dB. Most importantly, because the FCC is charged with enforcing Section 255 compliance, the volume control guidelines will have limited effect if they are not consistent.

1. Adopting the Access Board's Guidelines will not be burdensome to Industry and would avoid confusion

The Commission's concern that changing its rules would frustrate the work the industry has done in preparation for the January 1, 2000 volume control compliance under the HAC Act, *255 Order* at 25,¹¹ should not deter it from increasing the standard.¹² To address industry's concern, the Commission should issue an Order on Reconsideration adopting the 20dB minimum, and provide some flexibility in its compliance timetable so that the new standards are implemented with minimal burden on manufacturers as it did in the HAC Act proceeding. *Id.* at 10080.

Furthermore, if the Commission declines to alter its standards, it will be confusing to industry. The Commission acknowledged in the HAC NPRM that a blanket manufacturing requirement reduces confusion and increases the likelihood that a new or replaced telephone used in an emergency will have volume control. *See Access to Telecommunications Equipment and Services by Persons With Disabilities*, Notice of Proposed Rulemaking CC Docket No. 87-124, 11 FCC Rcd. 4338 (1995). Also, equipment manufacturers will be less inclined to adhere to the Access Board's guidelines if the Commission, the enforcing body, has lower standards.

¹¹The Commission stated in the, *255 Order*, that under 47 C.F.R. 68.317 all analog and digital telephones must provide between 12-18 dB of volume gain. *See 255 Order* at ¶ 25.

¹² The Commission previously rejected argument from industry representative who complained about the cost of the volume control requirement and determined that the benefits to the deaf and hard of hearing community outweighed the financial concerns. *See Access to Telecommunications Equipment and Services by Persons with Disabilities*, Order on Reconsideration, CC Docket 87-124, 12 FCC Rcd. 1077 (1997).

Therefore, to avoid confusion and encourage compliance, the Commission ought to conform its standards to be consistent with ANSI and the Access Board.

Conclusion

COR urges the Commission to reconsider its decision regarding adjustable volume control and to revise this order in a manner consistent with the goals and purpose of Section 255. Increasing the minimum adjustable volume gain to 20 dB will benefit the 26 million individuals who are deaf and hard of hearing people of all ages and all degrees of hearing loss.

Respectfully submitted,

Evelyn Cherow
American Speech-Language-Hearing
Hearing Association
10801 Rockville Pike
Rockville, MD 20852
(301) 897-5700
Co-Chair COR

Donna Sorkin
Alexander Graham Bell Association for the
Deaf and Hard of Hearing
3717 Volta Place, N.W.
Washington, DC 20007-2778
(202) 337-5220
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Angela J. Campbell, Esq.
Citizens Communications Center Project
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, N.W., Suite 312
Washington, D.C. 20001
(202) 662-9535

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Counsel for COR